

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ADAMS BANK & TRUST,)
Plaintiff,) 4:11CV3027
v.)
FIRSTIER BANK, KIMBALL,) MEMORANDUM AND
NEBRASKA, and FIRSTIER BANK,)
LOUISVILLE, COLORADO,)
Defendants.)

On November 17, 2011, the plaintiff filed its brief in opposition to the motion to change venue filed by defendant Federal Deposit Insurance Corporation as Receiver for Defendant FirsTier Bank, Louisville Colorado (“FDIC”). The plaintiff’s brief was served using the court’s CM/ECF system. FDIC filed its reply brief on December 1, 2011.

The plaintiff moved to strike the reply brief as untimely (filing no. [49](#)); FDIC has responded by moving to untimely file its reply brief (filing no. [53](#)).

Pursuant to Nebraska Civil Rule 7.0.1(c), a moving party may file a reply brief within 7 days after the opposing party files and serves its opposing brief.. [NECivR 7.0.1\(c\)](#). Counsel for the FDIC acknowledges the reply brief was untimely, but explains that the brief was due on Thanksgiving, and the due date was incorrectly calendared.

The following is provided as clarification for the parties' future filings. The FDIC's reply brief was not due on Thanksgiving, November 24, 2011, seven days after the plaintiff's opposing brief was filed, was Thanksgiving--a federal holiday. If the calculation of a deadline lands on a Saturday, Sunday, or federal holiday, the filing deadline is extended to the next day the court is open. [Fed. R. Civ. P. 6\(a\)\(1\)\(C\)](#); [NECivR 6.1\(c\)](#). In addition, the three-day mailing rule applies to electronically served documents. [Fed. R. Civ. P. 5.2\(b\)\(2\)\(E\)](#); [Fed. R. Civ. P. 6\(d\)](#); [NECivR 6.1\(b\)](#).

Therefore, FDIC's reply brief was due seven days ([NECivR 7.0.1\(c\)](#)), plus three days ([NECivR 6.1\(b\)](#)), after November 17, 2011. Ten days after November 17, 2011 was November 27, 2011. Since November 27, 2011 was a Sunday, the reply brief was due on November 28, 2011, the next day the court was open.

Although the FDIC's reply brief was filed three days late, there was apparent confusion over the filing deadline, the deadline was incorrectly calendared, and the plaintiff has cited no prejudice resulting from the untimely filing of the reply brief.

Accordingly,

IT IS ORDERED:

- 1) The motion for leave to file a reply brief out of time, (filing no. [53](#)), is granted, and the reply brief filed by the Federal Deposit Insurance Corporation as Receiver for Defendant FirsTier Bank, Louisville Colorado, (filing no. [48](#)), is deemed timely filed.
- 2) The plaintiff's motion to strike the reply brief, (filing no. [49](#)), is denied.

DATED this 5th day of December, 2011.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge

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